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SER Jobs for Progress, Inc. and M. Cheryl Kirby.
Case 16-CA-19638-1

June 18, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Charging Party on November 17, 1998, the General Counsel of the National Labor Relations Board issued a complaint on April 19, 1999, against SER Jobs for Progress, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On May 14, 1999, the General Counsel filed a Motion for Default Judgment with the Board. On May 18, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Judgment disclose that the Region, by letters dated April 20 and May 4, 1999, notified the Respondent that unless an answer was received by May 10, 1999, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Austin, Texas, has been engaged in the business of providing job training and placement services. During the 12 months preceding the issuance of the complaint, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 directly to customers located outside the State of Texas. We find that the Respondent is

an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent, by its director of operations, Safar Gerabagi, about May 22, 1998, threatened employees with termination if they complained to the Respondent's board of directors regarding work-related problems; about July 3, 1998, threatened an employee with unspecified reprisals if she continued to discuss work-related problems with other employees; and about July 7, 1998, threatened an employee with unspecified reprisals if that employee continued to discuss morale problems on the job with other employees.

About July 5 and 6, 1998, employees Grace Matamores-Poore, Christina Vasquez, Margie Pena, Judy Hostetler, and Lane Yardley complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees by reporting to the Respondent its employees' concerns regarding the altering of Job Training Partnership Act records.

About July 6, 1998, the Respondent terminated employee Mary Holder, and since such date has failed and refused to reinstate or offer to reinstate said employee to her former or substantially equivalent position of employment.

About July 8, 1998, the Respondent terminated Grace Matamores-Poore, Christina Vasquez, Margie Pena, Judy Hostetler, and Lane Yardley, and since such time has failed and refused to reinstate or offer to reinstate these employees to their former or substantially equivalent positions of employment.

The Respondent engaged in the conduct described above because its employees engaged in protected concerted activities or because the Respondent believed that its employees engaged in protected concerted activities, and to discourage its employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by discharging employees Mary Holder, Grace Matamores-Poore, Christina Vasquez, Margie Pena, Judy Hostetler, and Lane Yardley, we shall order the Respondent to offer the discriminatees full reinstatement to their

former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, SER Jobs for Progress, Inc., Austin, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with termination if they complain to the Respondent's board of directors regarding work-related problems, and threatening employees with unspecified reprisals if they discuss work-related problems or morale problems on the job with other employees.

(b) Discharging or otherwise discriminating against any employee for engaging in protected concerted activity.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Mary Holder, Grace Matamores-Poore, Christina Vasquez, Margie Pena, Judy Hostetler, and Lane Yardley, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Mary Holder, Grace Matamores-Poore, Christina Vasquez, Margie Pena, Judy Hostetler, and Lane Yardley whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Mary Holder, Grace Matamores-Poore, Christina Vasquez, Margie Pena, Judy Hostetler, and Lane Yardley, and within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all

other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Austin, Texas, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 22, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 18, 1999

Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

To form, join, or assist any union
 To bargain collectively through representatives
 of their own choice
 To act together for other mutual aid or protection
 To choose not to engage in any of these protected
 concerted activities.

WE WILL NOT threaten our employees with termination if they complain to the Respondent's board of directors regarding work-related problems, or threaten our employees with unspecified reprisals if they discuss work-related problems or morale problems on the job with other employees.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Mary Holder, Grace Matamores-Poore, Christina Vasquez, Margie Pena, Judy Hostetler, and Lane Yardley, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Mary Holder, Grace Matamores-Poore, Christina Vasquez, Margie Pena, Judy Hostetler, and Lane Yardley whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

SER JOBS FOR PROGRESS, INC.